

IC 34-13-6

Chapter 6. Appeals From Actions of Municipalities

IC 34-13-6-1

Complaint; filing; contents

Sec. 1. (a) An appeal allowed by statute from any action or decision of:

- (1) a board of a city;
- (2) the legislative body of a city if it performs the functions of a board; or
- (3) the legislative body of a town;

shall be filed as an original complaint against the city or town in the circuit or superior court of the county in which the municipality is located.

(b) The complaint on appeal must be filed not later than thirty (30) days after the date of the action or decision complained of, and one (1) or more parties appealing may join in the same complaint.

(c) The appeal may not be taken by transcript.

(d) The complaint on appeal must contain the following:

- (1) The title of the cause, specifying the name of the court and the county in which the appeal is filed.
- (2) Whether it is an appeal from a board or body.
- (3) The name of every party plaintiff to the appeal. The municipality must be named as the only defendant. Neither the board, the body, nor the individual members of the board or body may be made parties defendant to the complaint.

(4) A statement:

(A) of the facts constituting the cause of appeal, showing the nature of the proceedings in which and the date on which the action or decision complained of was taken; and

(B) if a statute controlling the proceeding requires, that a remonstrance in writing was filed by the plaintiff with the board or body as prescribed by statute, setting out a copy of the remonstrance and showing the date on which the remonstrance was filed.

(5) A description of each lot or tract of land or other property owned or controlled by the party or parties appealing and the amount of the award of damages or the amount of the assessment of benefits complained of for each lot or tract of land or other property described in the complaint, including the action or decision of the board or body concerning the award or assessment.

(6) If an appeal authorized by statute from an action or decision of a board or body does not involve or is not limited to the question of the amount of the award of damages or the assessment of benefits, a specific allegation of the action or decision that causes the party to complain.

(7) A demand for the relief to which the plaintiff believes the plaintiff is entitled, stating when the plaintiff became involved and the amount of damages that should be awarded or the

amount of benefits that should be assessed to or against each particular lot or tract of land or other property described in the complaint.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-2

Pleading; motions to dismiss complaint or appeal

Sec. 2. A pleading is not required by the municipality to the complaint on appeal since the allegations of the complaint are considered to be denied. The municipality may file a motion to dismiss the complaint by presenting any question of law regarding the sufficiency of the complaint on its face. The municipality may also file a motion to dismiss the appeal:

- (1) on the ground that the complaint was not filed within the time prescribed by law; or
- (2) on any other jurisdictional ground affecting the subject matter or the parties.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-3

Consolidation of appeals; separate trial

Sec. 3. (a) If more than one (1) appeal is taken from a proceeding and the appeals are filed in the same or different courts, any party to an appeal may file in the court a motion stating that justice will be best served by consolidating the appeals. The party shall serve notice of the motion on the adverse party or the attorney of record.

(b) If the court in which the motion is filed decides that justice will be best served by the consolidation, the court shall order all of the appeals consolidated. The appeals shall be heard at the same time by the court, and different appeals pending in different courts may all be transferred to one (1) court for the purpose of consolidation or trial. The court may hear all appeals at the same time either with or without consolidation. However, if any party appealing or the municipality objects to consolidation, they have the right to a separate trial of each appeal.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-4

Trial of appeals; scope of review; disposition

Sec. 4. (a) The decisions of the board or council appealed from are conclusive on all parties except the party appealing. The decision appealed from is considered prima facie correct and the burden of proof in all appeals is on the party appealing.

(b) All appeals shall be tried by the court without the intervention of a jury. The court shall try and hear de novo the issues of the action or decision of the board or council presented by written remonstrance or as otherwise provided by statute and raised by the appeals.

(c) The:

- (1) method of arriving at the action or decision of the board or council in making an award of damages or assessment of

benefits; and

(2) any issues not authorized by the statute to be made before the board or council, and appealed from;

may not be reviewed, considered, or adjudged by the court on appeal.

(d) The amount of benefits assessed or the damages awarded affecting any property, other than the property and the separate assessments or awards on them involved in each instance in a proceeding by a board or council from which an appeal is taken, may not be considered by the court on appeal.

(e) The court:

(1) may, on its own motion; and

(2) shall, on the motion of either party;

view and inspect any district, land, and property affected, damaged, benefited, or appropriated, including the work or thing proposed or done.

(f) The court, according to the particular statute allowing the appeal as the statute permits or prescribes the matters that may be considered, may set aside, affirm, lower, or increase an award, damages, or assessment of benefits as the court considers just and then order that action. The court also may affirm, reverse, or modify, in whole or in part, the action or decision of the board or council appealed from. The order and judgment of the court is conclusive upon all parties, and no appeal lies except upon questions affecting the jurisdiction of the court.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-5

Findings of court; judgment; costs; damages; assessment of benefits

Sec. 5. (a) If the court finds that the action or decision of the board or council appealed from should in all things be affirmed, its judgment must state that, naming the board or council and the proceedings in which the appeal is taken. Judgment for costs shall then be rendered against the party appealing.

(b) If the court finds that the action or decision of the board or council appealed from should not be affirmed in all things, then the court shall make a general finding, setting out, however, sufficient facts to show the nature of the proceeding and the court's decision on it. The court shall then render judgment on all matters properly involved in the appeal, adjudging specifically the amount of the award of damages or the amount of the assessment of benefits found by the court to be due to each lot, parcel, or description or property involved in the appeal and adjudging that the award or assessment is payable as provided by statute.

(c) The court shall render judgment on other matters involved where the particular appeal allowed by a statute does not relate to the award of damages or the assessment of benefits.

(d) The court shall also render judgment on the costs of the appeal as the facts and law require.

(e) If the appeal involves the amount of an award of damages or

the amount of an assessment of benefits, or both, the court shall include an order, if appropriate, for the issuance of a certificate of damages, bearing legal interest from the date of issuance, to the person entitled to it upon all the terms and conditions that are provided by the applicable statute. If the appeal involves benefits, the court shall permit the assessment of benefits to be paid in full, or a written waiver may be executed and filed for paying it in ten (10) annual installments, with legal interest payable, and upon all other terms and conditions that are provided by the applicable statute. All of this must be done within thirty (30) days after the date on which the clerk of the court certifies the order and judgment for transmission to the board or council. If an assessment of benefits is not paid or a waiver executed and filed as provided before the expiration of the thirty (30) day period, the assessment becomes delinquent and is subject to all penalties and to collection as is provided by the applicable statute.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-6

Change of venue or judge; rehearing; supreme court appeal; procedure

Sec. 6. A change of venue from the county is not allowed in the appeal, but a change of judge shall be allowed as provided for civil actions. A petition for rehearing may be filed by any party within fifteen (15) days after the decision, order, and judgment of the court. Pending that time and until a petition so filed is ruled upon, the order and judgment of the court may be certified to the board or council. At the time of ruling upon a petition, the court may grant time for filing an appeal bond and special bills of exceptions embracing as much of the record as is necessary to present fully any questions. The appeal must be fully perfected within sixty (60) days from the final ruling and action of the court upon the petition for a rehearing and shall be taken direct to the supreme court of Indiana, where it shall be placed upon the advance calendar of the court. The rules of trial procedure govern in all matters of procedure not otherwise provided for by this chapter.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-7

Increase in damages or reduction in assessment of benefits; liability of city; costs of appeal

Sec. 7. (a) If on appeal:

- (1) the amount of an award of damages is increased; or
- (2) the amount of an assessment of benefits is reduced;

the municipality is liable to the plaintiff for the increase in the award of damages and is liable to the party entitled to them for a reduction in the assessment of benefits.

(b) The amounts, costs, and expense, if the appeal is taken from the board of public works or the board of public works and safety, shall be paid by the board out of funds appropriated by the common

council or city-county council for that purpose, or as otherwise provided by statute.

(c) The council shall make all necessary appropriations as provided by statute to enable the board to make all payments required by this chapter, if not otherwise provided by statute and available for these purposes.

(d) If the appeal is taken from the board of park commissioners of a city, then the amounts, costs, and expenses shall be paid by the board out of its general fund, or as otherwise provided by statute.

(e) If the appeal is taken from the legislative body, other body, or an official of a municipality, the amounts required to comply with the court's order and judgment shall be appropriated and paid in any manner authorized by statute.

As added by P.L.1-1998, SEC.8.

IC 34-13-6-8

Priority of appeal

Sec. 8. An appeal takes precedence over other pending litigation and shall be tried and determined by the court at as early a date as practical.

As added by P.L.1-1998, SEC.8.